

PATRICK E. STOCKALPER, SBN 156954  
MOLSHREE GUPTA, SBN 275101  
KJAR, MCKENNA & STOCKALPER, LLP  
841 Apollo Street, Suite 100  
El Segundo, California 90245  
Telephone (424) 217-3026  
Facsimile (424) 367-0400  
[pstockalper@kmslegal.com](mailto:pstockalper@kmslegal.com)  
[mgupta@kmslegal.com](mailto:mgupta@kmslegal.com)

Attorneys for Defendants,  
**COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY** (erroneously  
sued and served as “**SHERIFF DEPUTY BADGE NUMBER 404532**”)  
*(Defendants is exempt from filing fees pursuant to Government Code § 6103)*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF.

**Case No.: 2:22-cv-05367 RGK(MAAx)**

## Plaintiffs,

V.

COUNTY OF LOS ANGELES;  
SHERIFF DEPUTY BADGE  
NUMBER 404532; And DOES 1  
through 10,

## Defendants

**DEFENDANTS COUNTY OF LOS  
ANGELES AND SERGEANT TRAVIS  
KELLY'S ANSWER TO PLAINTIFF'S  
FIRST AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Action Filed: August 3, 2022  
Pretrial Conference: July 10, 2023  
Trial Date: July 25, 2023

Assigned to:  
Hon. R. Gary Klausner, District Judge  
Courtroom 850

All Discovery Matters Referred to:  
Hon. Maria A. Audero, District Judge

COMES NOW Defendants COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY (erroneously sued and served as "SHERIFF DEPUTY BADGE

1   **NUMBER 404532")** and answering Plaintiff's Complaint for itself and for no other  
2 parties, admit, denies and alleges as follows:

3       1. Answering paragraph 1, Defendants admit the following allegations:  
4 “Plaintiff, a young black male, was driving.” Defendants lack sufficient information and  
5 belief upon which to answer the allegations contained therein, and on that basis denies  
6 the remaining allegations.

## JURISDICTION

8           2. Answering paragraph 2, Defendants admit that jurisdiction is properly with  
9 this Court.

## **VENUE**

11       3. Answering paragraph 3, Defendants admits that jurisdiction is appropriately  
12      in the Central District of California.

## THE PARTIES

14       4. Answering paragraph 4, Defendants lack sufficient information and belief  
15 upon which to answer the allegations contained therein, and on that basis denies the  
16 allegations.

17 5. Answering paragraph 5, Defendants admit the allegations.

18       6. Answering paragraph 6, Defendants admit the following allegations:  
19 “Defendant DEPUTY is and at all times herein mentioned has been an individual acting  
20 under color of authority, as a Peace Officer, within the meaning of California Penal Code  
21 830.1. DEPUTY was an employee of the Department.” Defendants lack sufficient  
22 information and belief upon which to answer the allegations contained therein, and on  
23 that basis denies the remaining allegations.

24       7. Answering paragraph 7, Defendants lack sufficient information and belief  
25 upon which to answer the allegations contained therein, and on that basis deny the  
26 allegations.

8. Answering paragraph 8, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

## **GENERAL ALLEGATIONS**

9. Answering paragraph 9, Defendants admit the following allegations: "Plaintiff is a [] black male." Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

10. Answering paragraph 10, Defendants admit the following allegations: "On or about September 24, 2021, [] Plaintiff was driving." Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

11. Answering paragraph 11, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

12. Answering paragraph 10, Defendants admit that a portion of the “encounter was captured on the DEPUTY’s body worn camera.” Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

13. Answering paragraph 13, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

## **FIRST CAUSE OF ACTION**

14. Answering paragraph 14, which incorporates by reference the allegations of other paragraphs of the pleading, Defendants to the same extent incorporate by reference the answers provided herein to those paragraphs.

15. Answering paragraph 15, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

16. Answering paragraph 16, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

17. Answering paragraph 17, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

18. Answering paragraph 18, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

## **SECOND CAUSE OF ACTION**

19. Answering paragraph 19, which incorporates by reference the allegations of other paragraphs of the pleading, Defendants to the same extent incorporate by reference the answers provided herein to those paragraphs.

20. Answering paragraph 20, Defendants admit the allegations.

21. Answering paragraph 21, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

22. Answering paragraph 22, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

23. Answering paragraph 23, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

24. Answering paragraph 24, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

25. Answering paragraph 25, Defendants lack sufficient information and belief upon which to answer the allegations contained therein, and on that basis deny the allegations.

## **AFFIRMATIVE DEFENSES**

As separate and distinct affirmative defenses, Defendants allege each of the following:

## **FIRST AFFIRMATIVE DEFENSE**

1. Defendants allege that neither the First Amended Complaint on file in this action, nor any of the alleged causes of action therein, state facts sufficient to constitute a cause of action on which relief can be granted against Defendant.

## **SECOND AFFIRMATIVE DEFENSE**

2. As to the federal claims and theories of recovery, the individual defendants are protected from liability under the doctrine of qualified immunity, because the individual defendants' conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known and was reasonable based upon the information that it possessed at the time. The individual defendants reasonably believed "in good faith" that what they did was lawful and appropriate, and relied upon information provided to them. Moreover, the individual defendants acted under a reasonable, even if mistaken, belief that what they did was reasonable, appropriate and lawful.

### **THIRD AFFIRMATIVE DEFENSE**

3. These answering Defendants allege that the damages, if any, alleged by Plaintiff was caused in whole or in part, or were contributed to by reason of the negligence and intentional acts of Plaintiff.

## **FOURTH AFFIRMATIVE DEFENSE**

4. Plaintiff has failed, in whole or in part, to mitigate his damages.

111

111

**FIFTH AFFIRMATIVE DEFENSE**

5. That the incidents referred to in the First Amended Complaint, and resulting damages, if any, to Plaintiff was proximately caused or contributed to by Plaintiff's own negligence or culpable conduct, and such negligence or culpable conduct was greater than the negligence, if any, of this answering Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

6. That any damage suffered by Plaintiff was a direct and proximate result of his own misconduct and actions or the misconduct or actions of a third person.

**SEVENTH AFFIRMATIVE DEFENSE**

7. That the acts complained of this answering Defendants were justified and privileged under the circumstances.

**EIGHTH AFFIRMATIVE DEFENSE**

8. This answering Defendants did not have or enact any policy, statute, ordinance or custom which denied or infringed upon any of Plaintiff's alleged constitutional rights.

**NINTH AFFIRMATIVE DEFENSE**

9. This answering Defendants cannot be held liable under 42 U.S.C. §1983 on a Respondent Superior Theory.

**TENTH AFFIRMATIVE DEFENSE**

10. That to the extent Plaintiff's causes of actions against this answering Defendants sound in negligence, that no recovery can be predicated upon 42 U.S.C. § 1983.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. The actions of the individual defendants were privileged to the extent that they could use the force reasonably necessary to respond to the situation with which they were confronted.

27      ///

28      ///

**TWELFTH AFFIRMATIVE DEFENSE**

12. That the incident referred to Plaintiff's First Amended Complaint and all  
3 injuries and damages, if any, resulting there from were the result of an unavoidable  
4 incident so far as these answering Defendants are concerned.

**THIRTEENTH AFFIRMATIVE DEFENSE**

6 13. Neither a public entity, nor a public employee, is liable for his/her act or  
7 omission, exercising due care, in the execution or enforcement of any law.

**FOURTEENTH AFFIRMATIVE DEFENSE**

9 14. Defendants sued in their official capacities are immune from the imposition of  
10 punitive damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

12 15. That the acts or omissions, if any, of this answering Defendants were not a  
13 substantial factor in bringing about the Plaintiff's alleged damages, if any, and therefore,  
14 were not a contributing cause thereof, but were superseded by the acts or omission of  
15 others, which are independent, intervening, and proximate causes of any such injuries or  
16 damages allegedly suffered.

**SIXTEENTH AFFIRMATIVE DEFENSE**

18 16. At all times mentioned in Plaintiff's Complaint, this answering Defendants did  
19 not personally participate in any of the Plaintiff's alleged violations of his constitutional  
20 rights.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

22 17. Plaintiff was not exposed to an excessive risk of harm for which he incurred  
23 serious injury.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

25 18. The damages alleged by Plaintiff were the result of independent,  
26 intervening acts, over which these answering Defendants had no control, which resulted  
27 in a superseding cause of Plaintiff's alleged injuries.

28 ///

**NINETEENTH AFFIRMATIVE DEFENSE**

19. This action is barred by the applicable statutes of limitations.

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Plaintiffs' claims are barred by the doctrine of unclean hands.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. Plaintiffs' claims are barred by the doctrine of laches.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. Plaintiffs have failed to join all necessary parties to this action.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

23. Plaintiffs' First Amended Complaint fails to state a cause of action against Defendant COUNTY pursuant to *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978), as there can be no recovery for a federal civil rights violation where there is no constitutional deprivation occurring pursuant to governmental policy or custom.

**TWENTY-FOUR AFFIRMATIVE DEFENSE**

24. Plaintiff's First Amended Complaint, each purported cause of action therein and factual allegations therein, considered separately or as a whole, are uncertain and ambiguous.

**TWENTY-FIVE AFFIRMATIVE DEFENSE**

25. Except as otherwise provided by statute, public employees of the State of California and its departments or agencies, including the COUNTY OF LOS ANGELES, are not liable for any injury or damages to Plaintiff caused by the act or omission of another person, including, but not limited to, the acts or omissions of another public employee. (Gov. Code, § 820.8.)

**TWENTY-SIX AFFIRMATIVE DEFENSE**

26. COUNTY OF LOS ANGELES is not liable for any injury or damages to Plaintiff, if Plaintiff suffered any such injury or damages, resulting from an exercise of

1 discretion vested in a public employee, whether or not such discretion is abused. (Gov.  
2 Code, §§ 815.2, sudb. (b), 820.2.)

3 **TWENTY-SEVEN AFFIRMATIVE DEFENSE**

4 27. If and to the extent that the allegations of Plaintiff's Complaint attempt to  
5 enlarge upon the facts and contentions set forth in his Government Claim, if there was  
6 any, Plaintiff's Complaint fails to state a cause of action and is barred by Government  
7 Code sections 905.2, 911.2 and 950.2.

8 **TWENTY-EIGHT AFFIRMATIVE DEFENSE**

9 28. COUNTY OF LOS ANGELES is not liable for any injury or damages to  
10 Plaintiff, if Plaintiff suffered any such injury or damages, by way of vicarious liability,  
11 respondeat superior; or otherwise, where the public employee whose conduct allegedly  
12 caused the injury or damage is not liable or is immune from liability. (Gov. Code, §  
13 815.2).

14 **TWENTY-NINE AFFIRMATIVE DEFENSE**

15 29. There is no liability for any injury or damages, if any there were, resulting  
16 from failure to discharge any mandatory duties as reasonable diligence was exercised to  
17 discharge any duty there may have been. (Gov. Code, § 815.6).

18 **THIRTY AFFIRMATIVE DEFENSE**

19 30. COUNTY OF LOS ANGELES owes no duty of care to Plaintiff, and nor  
20 any COUNTY OF LOS ANGELES employee within the scope of employment stood or  
21 stands in such a special relationship to Plaintiff so as to give rise to any duty running to  
22 Plaintiff.

23 **THIRTY-ONE AFFIRMATIVE DEFENSE**

24 31. Plaintiff willingly, voluntarily and knowingly assumed each, every, and all  
25 the risks and hazards involved in the activities alleged in Plaintiff's Complaint.

26 ///

27 ///

28 ///

1                   **THIRTY-TWO AFFIRMATIVE DEFENSE**

2       32. The risk of injury, if there was any risk, was created by an act or omission  
3 which was reasonable within the meaning of Government Code sections 835.4, 840.4,  
4 and 840.6.

5                   **THIRTY-THREE AFFIRMATIVE DEFENSE**

6       33. If it is found that any Defendant is legally responsible for the damages, if  
7 any, which Defendants specifically deny, then such damages were proximately caused  
8 by or contributed to by Plaintiffs or others, whether served or not, and it is necessary that  
9 the proportionate degree of fault of every such person be determined and prorated by the  
10 trier of fact, and that any judgment which might be rendered against any Defendant be  
11 reduced by that percentage of fault to be found to exist of Plaintiffs or others and  
12 causative fault, whether sued herein or not.

13                  **THIRTY-FOUR AFFIRMATIVE DEFENSE**

14       34. These Defendants presently have insufficient knowledge or information  
15 upon which to form a belief as to whether Defendants may have additional affirmative  
16 defenses to Plaintiff's Complaint. Defendant therefore reserves the right to assert  
17 additional defenses in the event that discovery indicates that such affirmative defenses  
18 are appropriate.

19       ///

20       ///

21       ///

22       ///

23       ///

24       ///

25       ///

26       ///

27       ///

28       ///

## **DEMAND FOR JURY TRIAL**

Defendants hereby demand and request a trial by jury in this matter.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by this action;
2. That the action be dismissed;
3. That Defendants be awarded costs of suit;
4. That Defendants be awarded other and further relief as the Court may deem

just and proper, including an award of attorney's fees pursuant to 42 U.S.C. §1988.

Dated: March 6, 2023

## KJAR, MCKENNA & STOCKALPER, LLP

By: /s/ Molshree Gupta  
PATRICK E. STOCKALPER  
MOLSHREE GUPTA  
Attorneys for Defendants,  
COUNTY OF LOS ANGELES and SERGEANT  
TRAVIS KELLY